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17 Attorneys for Plaintiffs
 CORY SPENCER, DIANA MILENA
 18 REED, and COASTAL PROTECTION
 RANGERS, INC.
 19

20 **UNITED STATES DISTRICT COURT**
 21 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
 22

23 CORY SPENCER, an individual;
 24 DIANA MILENA REED, an
 individual; and COASTAL
 25 PROTECTION RANGERS, INC., a
 26 California non-profit public benefit
 corporation,
 27

28 Plaintiffs,

CASE NO. 2:16-cv-02129-SJO (RAOx)

**PLAINTIFFS' STATEMENT OF
 GENUINE DISPUTES OF MATERIAL
 FACT IN OPPOSITION TO
 DEFENDANTS CITY OF PALOS
 VERDES ESTATES AND CHIEF OF
 POLICE JEFF KEPLEY'S MOTION
 FOR SUMMARY JUDGMENT OR, IN
 THE ALTERNATIVE, SUMMARY
 ADJUDICATION**

Case No. 2:16-cv-02129-SJO (RAOx)

PLTFS.' STMT. OF GENUINE DISPUTES OF MATERIAL FACT IN OPP. TO DEFTS. CITY OF PALOS VERDES
 ESTATES AND KEPLEY'S MOT. FOR SUMM. JUDGMENT OR, IN THE ALT., SUMM. ADJUD.

1
2 v.

3 LUNADA BAY BOYS; THE
4 INDIVIDUAL MEMBERS OF THE
5 LUNADA BAY BOYS, including but
6 not limited to SANG LEE, BRANT
7 BLAKEMAN, ALAN JOHNSTON,
8 AKA JALIAN JOHNSTON,
9 MICHAEL RAE PAPAYANS,
10 ANGELO FERRARA, FRANK
11 FERRARA, CHARLIE FERRARA,
and N. F.; CITY OF PALOS VERDES
ESTATES; CHIEF OF POLICE JEFF
KEPLEY, in his representative
capacity; and DOES 1-10,

12 Defendants.
13

Judge: Hon. S. James Otero
Date: August 21, 2017
Time: 10:00 a.m.
Crtrm.: 10C

Complaint Filed: March 29, 2016
Trial Date: November 7, 2017

14 Plaintiffs Cory Spencer, Diana Milena Reed, and Coastal Protection Rangers,
15 Inc. ("Plaintiffs") hereby respectfully submit the following Statement of Genuine
16 Disputes of Material Fact in Opposition to Defendants City of Palos Verdes Estates
17 and Chief of Police Jeff Kepley (collectively, "Defendants") in opposition to
18 Defendants' Motion for Summary Judgment or, in the Alternative, Summary
19 Adjudication.

20 As a preliminary matter, Defendants' Statement of Undisputed Material Facts
21 fails to comply with Rule 27b of Judge Otero's Standing Order. Specifically,
22 Defendants fail to separate the statements of undisputed material facts such that it is
23 clear which facts allegedly support each claim for relief.

24 ///

25 ///

26 ///

27 ///

28

<p>Defendants' Statement of Uncontroverted Facts and Evidence in Support</p>	<p>Plaintiffs' Response in Opposition</p>
<p>1. Before the age of 20, Spencer visited Lunada Bay on four or five occasions. He never experienced intimidation, vandalism, or any other harmful act.</p> <p>October 11, 2016 Deposition of Plaintiff Cory Eldon Spencer ("Spencer Deposition"), 60:10-61.14.</p>	<p>1. Disputed in Part. Defendants' statement is a misrepresentation of the facts. Plaintiff Cory Eldon Spencer ("Plaintiff Spencer") did not attempt to surf at Lunada Bay on the 4 or 5 occasions that he visited Lunada Bay before the age of 20. Declaration of Cory Spencer In Support of Plaintiffs' Motion for Class Certification ("Decl. Spencer Supp. Class Cert."), Dkt. No. 159-4, at ¶ 5 ("I usually brought my surfboards with me though I never did surf on any of those occasions. I was always afraid of becoming a victim of localism at Lunada Bay."); Deposition of Cory Spencer ("Spencer Dep.") at 62:19-23 ("Q: Okay. So when you visited Lunada Bay before you turned 20, you went to Lunada Bay but did not surf, correct? A: That's correct.")</p>
<p>2. After age 20, but before January 2016, Spencer visited Lunada Bay another four or five times. No individual approached him or spoke to</p>	<p>2. Disputed in Part. Defendants' statement is a misrepresentation of the facts. Plaintiff Spencer did not attempt to surf at Lunada Bay until</p>

1	Defendants' Statement of Uncontroverted Facts and Evidence in Support	Plaintiffs' Response in Opposition
2		
3	him, but he "believes" he experienced	approximately January 2016. Decl.
4	localism on one of the visits because	Spencer Supp. Class Cert., ¶ 5.
5	there was "a group of guys at their local	
6	spot being locals".	
7		
8	Spencer Deposition, 82:19-84:3.	
9	3. On January 29, 2016, Spencer	3. Undisputed.
10	decided to surf at Lunada Bay with a	
11	group of other surfers.	
12		
13	Spencer Deposition, 75:17-76:5.	
14	4. Prior to the January 29, 2016 visit,	4. Disputed in Part. Defendants'
15	Spencer emailed Chief Kepley and a	statement is a misrepresentation of the
16	Police Captain to request extra police	facts. Plaintiff spencer testified that he
17	patrols during his visit to Lunada Bay.	could not recall whether he initially
18		contacted Chief Kepley and a Police
19	Spencer Deposition, 78:3-79:8.	Captain via e-mail or telephone.
20		Spencer Dep. at 78:20-22 (Q" How did
21		you contact him?" A "I don't know if
22		the first time was initially E-mail or a
23		call.").
24	5. Extra police patrols were provided.	5. Disputed in Part. Defendants'
25		statement is a misrepresentation of the
26	Spencer Deposition, 125:22-127:15,	facts. Plaintiff Spencer did not testify
27	193:20-194:17.	that extra patrols were provided. In
28		

1	Defendants' Statement of Uncontroverted Facts and Evidence in Support	Plaintiffs' Response in Opposition
2		
3		response to being asked whether extra
4		patrols were provided, he stated "I can
5		only tell you what I experienced, there
6		was a group of officers that was there
7		<i>after</i> I was out of the water." Spencer
8		Dep. 85:12-21.
9		
10	6. On January 29, 2016, Spencer recalls	6. Undisputed.
11	an unidentified individual telling him	
12	"You can't surf here kook."	
13		
14	Spencer Deposition, 98:5-100:6.	
15	7. Spencer also recalled statements like	7. Undisputed.
16	"How many other places did you pass to	
17	get here to surf?" and "Why don't you	
18	fucking go home, you fucking kook."	
19		
20	Spencer Deposition, 102:12-103:3.	
21		
22	8. Another unidentified individual	8. Undisputed.
23	made similar comments.	
24		
25	Spencer Deposition, 103:21-104:24.	
26	9. In the water, Spencer testified that an	9. Disputed in Part. Defendants'
27	unidentified LBB Defendant crossed	statement is a misrepresentation of the
28	surf boards with him and left a half-inch	facts. Plaintiff Spencer testified that an

1	Defendants' Statement of	Plaintiffs' Response in Opposition
2	Uncontroverted Facts and Evidence	
3	cut on his right wrist.	unidentified Bay Boy "intentionally ran
4		[him] over with his surfboard and
5	Spencer Deposition, 106:17-107:6.	sliced open [his] hand." Spencer Dep.
6		at 106:16-107:1.
7		
8	10.Spencer believed the incident was	10. Disputed in Part. Defendants'
9	intentional, but the purported LBB	statement is a misrepresentation of the
10	Defendant claimed that Spencer was	facts. The Lunada Bay Boy Defendant
11	paddling in the sun glare and that he had	stated to Plaintiff Spencer "... I should
12	not seen Spencer.	have ran you over. Why are you
13		paddling in the sun glare where I can't
14	Spencer Deposition, 109:10-22.	see you? ... I should have ran you
15		over." Spencer Dep. at 109:4-22.
16		
17		
18	11.Spencer claimed to be fearful, but	11. Disputed. Plaintiff Spencer
19	continued to surf at least one more wave	testified that he left the water that day
20	before leaving the water because he was	because he and his friend decided it
21	"getting a little hypothermic" and his	was "getting too crazy" in the water
22	wrist was bleeding.	and because more Bay Boys "started
23		showing up on the fort." Spencer Dep.
24	Spencer Deposition, 110:9-24; 114:24-	at 113:24-114:1. Plaintiff Spencer had
25	115:14.	decided to stay <i>in</i> the water initially
26		after being injured "to let the cold help
27		with the cut." <i>Id.</i> at 115:8-9.
28		

1	Defendants' Statement of Uncontroverted Facts and Evidence in Support	Plaintiffs' Response in Opposition
2		
3		
4	12.Spencer's companion continued to	12. Disputed in Part. Defendants'
5	surf.	statement is a misrepresentation of the
6		facts. Plaintiff Spencer's companion
7	Spencer Deposition, 115:2-5.	continued to surf after Plaintiff Spencer
8		was injured, but while Plaintiff Spencer
9		was still in the water. Spencer Dep. at
10		115:2-14. Spencer and his companion
11		exited the water at the same time. <i>Id.</i>
12		at 114:17-23.
13		
14	13.Upon returning to the top of the	13. Undisputed.
15	Lunada Bay bluff, Spencer encountered	
16	five or six police officers, three police	
17	vehicles, and a motorcycle.	
18		
19	Spencer Deposition, 130:23-132:15.	
20		
21	14.Spencer approached the police	14. Undisputed.
22	officers to thank them for showing up	
23	and to express his appreciation. He also	
24	told a police officer about his incident,	
25	including stating "[t]he guy is going to	
26	claim sun glare and whatnot" caused the	
27	collision.	
28		

1	Defendants' Statement of Uncontroverted Facts and Evidence in Support	Plaintiffs' Response in Opposition
2		
3	Spencer Deposition, 125:22-127:15.	
4	15.Spencer, a police officer himself, did	15. Disputed. Defendants' statement is
5	not tell the police officer that what	a misrepresentation of the facts.
6	happened was a crime.	Plaintiff Spencer did not testify that he
7		did not tell the police officer that what
8	Spencer Deposition, 111:5-112:1;	happened was a crime. Rather,
9	279:2-280:14; 128:4-17.	Plaintiff Spencer testified that,
10		although it was a crime, he did not tell
11		the Lunada Bay Boy who ran over him
12		with the surfboard that his actions were
13		a crime. Spencer Dep. 111:5-112:1.
14		
15	16.Spencer did not ask for a police	16. Disputed in Part. Plaintiff Spencer
16	investigation or follow up on the matter.	did not testify that he did not ask for a
17		police investigation. Rather, he
18	Spencer Deposition, 125:22-127:15.	testified that he did not ask for a
19		"formal report." Spencer Dep. 127:6-8.
20		
21	17.After January 29, 2016, Spencer	17. Undisputed.
22	never communicated to anyone at the	
23	City about the incident.	
24		
25	Spencer Deposition, 132:25-134:11.	
26	18.Christopher Taloa testified that the	18. Disputed in Part. Defendants'
27	City police "ha[s] been nothing but	statement is a misrepresentation of the
28		

1	Defendants' Statement of Uncontroverted Facts and Evidence in Support	Plaintiffs' Response in Opposition
2		
3	good to me. They have been there for	facts. Mr. Taloa's cited testimony and
4	us and I am so thankful and grateful on	comment regarding the City police was
5	that aspect in that matter.”	in response to a question asking how he
6		felt about the City's police presence
7	January 5, 2017 Deposition of	solely during the "MLK paddle out"
8	Christopher Taloa, 303:19-25	(on January 20, 2014). Taloa Dep. at
9		303:19-20.
10		
11	19.Spencer returned to Lunada Bay in	19. Undisputed.
12	February not to surf, but to observe for	
13	incidents, as well as to watch the other	
14	surfers' property.	
15		
16	Spencer Deposition, 137:16-138:5.	
17	20. Spencer again contacted the Police	20. Undisputed.
18	Department about his planned trip and	
19	remembers seeing two or three police	
20	vehicles and two patrolmen and a	
21	sergeant on this date.	
22		
23	Spencer Deposition, 139:2-140:2;	
24	184:13-185:6.	
25	21.Spencer remembers unidentified	21. Disputed in Part. Plaintiff Spencer
26	individuals (some driving by and some	identified Defendant Blakeman as one
27	standing on the bluffs) calling him	of the individuals who harassed him
28		

1	Defendants' Statement of	Plaintiffs' Response in Opposition
2	Uncontroverted Facts and Evidence	
3		
4	"kook" and asking "what are you	during his February 2016 visit to
5	doing?"	Lunada Bay. Spencer Dep. 143:13-24.
6	Spencer Deposition, 142:24-144:19.	
7	22.Spencer recognized Defendant	22. Disputed in Part. Plaintiff Spencer
8	Blakeman, who stood between 5 and 50	testified that Defendant Blakeman
9	feet away filming him and the other	"constantly circled [them]...sticking
10	surfers.	his GoPro in [their] faces." He further
11		testified that when Defendant
12	Spencer Deposition, 143:13-144:16.	Blakeman stuck his GoPro in their
13		faces he was between 5-30, 40 or 50
14		feet away. Spencer Dep. at 143:13-
15		144:16.
16		
17		
18	23.Spencer encountered no other action	23. Disputed. Plaintiff Spencer
19	that he viewed as harassment or	identified other actions that he found
20	violence.	harassing and threatening.
21		Specifically, Plaintiff Spencer testified
22	Spencer Deposition, 146:18-19.	that he found the fact that individuals
23		called him "kook" and asked "what are
24		you doing" was harassing. Spencer
25		Dep. at 142:24-143:4. He further
26		testified that he found the name calling
27		he experienced harassing. Spencer
28		

1	Defendants' Statement of Uncontroverted Facts and Evidence in Support	Plaintiffs' Response in Opposition
2		
3		Dep. at 143:5-10. He also testified that
4		he found Defendant Blakeman's actions
5		of constantly circling him and sticking
6		a GoPro in his face to be threatening.
7		Spencer Dep. 143:13-144:19. He also
8		testified that the Local Bay Boys
9		repeatedly passed by and "more and
10		more" started to show up, with groups
11		of 15 to 20 on each end of the trail to
12		get to the beach, who were yelling at
13		him "to fucking get out of there," "why
14		are you here?," "Go home," and "Don't
15		surf here." Spencer Dep. 146: 21-
16		149:23.
17		
18	24. On March 4, 2016, Spencer emailed	24. Disputed in Part. While Plaintiff
19	Chief Kepley to thank him and the	Spencer thanked Chief Kepley for
20	Police Department for providing the	providing extra police patrols, he also
21	extra police patrols.	provided "a suggestion how to address
22		the localism problem at Lunada Bay
23	Spencer Deposition, 158:9-159:14;	since it seemed he had been unable to
24	160:7-12; Spencer Deposition, Exhibit	effectively do so up to that point."
25	42.	Decl. Spencer Supp. Class Cert., ¶ 25.
26		
27	25. In subsequent months, Spencer	25. Undisputed.
28		

1	Defendants' Statement of Uncontroverted Facts and Evidence in Support	Plaintiffs' Response in Opposition
2		
3	visited Lunada Bay between three to	
4	five times.	
5		
6	Spencer Deposition, 170:9-24.	
7	26.Spencer observed unidentified	26. Disputed. Defendants' statement is
8	individuals slowly drive by while using	a misrepresentation of the facts.
9	cell phones and then later observed	Nowhere in the cited testimony does
10	more unidentified individuals showing	Plaintiff Spencer confirm that nothing
11	up. However, Spencer confirmed that	happened on subsequent visits and
12	nothing happened on these subsequent	instead explains his worry that he
13	visits.	would experience violence and bodily
14		harm. Spencer Dep. at 173:8-16.
15	Spencer Deposition, 173:5-174:14.	
16		
17	27.Spencer does not recall any City	27. Disputed in Part. While Plaintiff
18	police officer ever asking him where he	Spencer did not recall whether a City
19	lived.	police officer ever asked him where he
20		lived, he also testified that he didn't
21	Spencer Deposition, 305:17-23.	have to tell the City police officers that
22		he was an El Segundo Police Officer
23		because he "used to work with one of
24		them." Spencer Dep. at 341:21-342:2.
25		
26		
27	28.Reed's first visit to Lunada Bay was	28. Disputed. Plaintiff Reed testified
28		

1	Defendants' Statement of	Plaintiffs' Response in Opposition
2	Uncontroverted Facts and Evidence	
3	in Support	
4	on January 6, 2016.	that she may have been to Lunada Bay
5	October 24, 2016 Deposition of Diana	prior to January 6, 2016. Reed Dep. at
6	Milena Reed ("10/24/16 Reed	105:7-11 ("Q: And had you ever
7	Deposition"), 104:7-105:6.	stopped at Lunada Bay at all before
8		January 6, 2016? A: Yeah, I may have
9		when I was looking at the coast, I don't
10		know.")
11	29. Reed was there for two hours and no	29. Disputed in Part. Defendants'
12	one harassed, intimidated or otherwise	statement is a misrepresentation of the
13	caused her or her property harm.	facts. Plaintiffs do not dispute that
14		Plaintiff Reed did not experience
15	10/24/16 Reed Deposition, 108:22-	harassment, intimidation, or vandalism
16	109:19.	when she visited Lunada Bay on
17		January 6, 2016. However, Plaintiffs
18		dispute this fact to the extent it
19		suggests that individuals were present
20		to engage in harassment, intimidation,
21		or vandalism on January 6, 2016.
22		Plaintiff Reed testified that no local
23		surfers were present at Lunada Bay on
24		January 6, 2016. Reed Dep. at 108:22-
25		109:19.
26		
27	30. On January 29, 2016, Reed returned	30. Undisputed.
28		

1	Defendants' Statement of	Plaintiffs' Response in Opposition
2	Uncontroverted Facts and Evidence	
3	in Support	
4	to Lunada Bay to surf with her	
5	boyfriend.	
6	10/24/16 Reed Deposition, 101:22-	
7	103:18.	
8	31.Unidentified individuals in	31. Undisputed.
9	automobiles drove around Reed's	
10	vehicle and yelled "kooks", "you can't	
11	surf here" and profanities at her. Other	
12	unidentified individuals videotaped her.	
13		
14	10/24/16 Reed Deposition, 119:25-	
15	121:1; 129:18-23; 130:8-14.	
16	32.After a descending to the beach, an	32. Undisputed.
17	unidentified individual purportedly	
18	called her a "whore" and then returned	
19	to yell profanities at them. A police	
20	officer walked over and asked her what	
21	was going on. Reed described the	
22	incident and he inquired whether she	
23	wanted to file a police report, which she	
24	did.	
25		
26	10/24/16 Reed Deposition, 130:17-25;	
27	134:5-24.	
28		

1	Defendants' Statement of	Plaintiffs' Response in Opposition
2	Uncontroverted Facts and Evidence	
3		
4	33.The police detained a suspect but	33. Undisputed.
5	informed Reed that because they did not	
6	overhear the words yelled, they could	
7	not arrest the individual.	
8	10/24/16 Reed Deposition, 135:14-25.	
9	34.The police counseled Reed on filing	34. Disputed in Part. Defendants'
10	a citizen's arrest, including the possible	statement is a misrepresentation of the
11	civil ramifications if she were found	facts. Plaintiff Reed testified that the
12	wrong in making the arrest.	police dissuaded her from filing a
13		citizen's arrest by telling her that it was
14	10/24/16 Reed Deposition, 135:14-	"not a good idea to file a citizen's
15	136:17; 141:3-11.	arrest" because she is at risk of getting
16		sued because "people at Lunada Bay
17		have a lot of money and can hire good
18		lawyers and that will put [her] in a risk
19		of getting into a lawsuit." Reed Dep. at
20		135:14-136:11.
21		
22	35.The police told Reed that the	35. Undisputed.
23	outcome would be the same whether she	
24	filed a police report or undertook a	
25	citizen's arrest (absent the civil liability	
26	exposure).	
27		
28		

1	Defendants' Statement of Uncontroverted Facts and Evidence in Support	Plaintiffs' Response in Opposition
2		
3	10/24/16 Reed Deposition, 135:14-	
4	136:17.	
5	36. Reed did not know whether the	36. Disputed in Part. Plaintiff Reed
6	police officer asked where she was	testified that she did not know whether
7	from.	the police asked her where she was
8		from when she was down on the beach,
9	10/24/16 Reed Deposition, 138:19-	but she had to provide her address
10	139:3.	when she filed the police report. Reed
11		Dep. at 138:19-139:3.
12		
13	37. On February 5, 2016, Reed returned	37. Undisputed.
14	to Lunada Bay.	
15		
16	10/24/16 Reed Deposition, 146:11-20.	
17	38. Reed could not recall whether police	38. Disputed in Part. Defendants'
18	were present, but did remember her	statement is a misrepresentation of the
19	boyfriend surfed without incident.	facts to the extent it suggests local
20		surfers were present but did not harass
21	10/24/16 Reed Deposition, 154:24-	Plaintiff Reed's boyfriend. Plaintiff
22	155:18; 156:16-17.	Reed testified that her boyfriend "was
23		the only person out there surfing."
24		Reed Dep. at 155: 8-11.
25		
26	39. On February 13, 2016, Reed returned	39. Undisputed.
27	to Lunada Bay.	
28		

1	Defendants' Statement of Uncontroverted Facts and Evidence in Support	Plaintiffs' Response in Opposition
2		
3		
4	10/24/16 Reed Deposition, 156:23-	
5	157:5.	
6	40. Reed could not recall the specific	40. Disputed. Plaintiff Reed testified
7	chain of events, but remembers "various	that she did not "remember the specific
8	profanities of various instances".	insults, the specific words of the insults
9		that were yelled," but that she
10	10/24/16 Reed Deposition, 167:10-	remembered various profanities of
11	168:2.	various instances. Reed Dep. at
12		167:10-168:2.
13		
14	41. Reed also recalled a middle-aged	41. Undisputed.
15	male and teenage boy filming her and	
16	her boyfriend, attempting to block their	
17	path, and telling them they were "done".	
18		
19	10/24/16 Reed Deposition, 167:10-	
20	168:2.	
21	42. At the base of the Lunada Bay bluff,	42. Disputed in Part. Plaintiff Reed
22	Reed was approached by Defendants	was approached by Defendants
23	Blakeman and Johnston. Reed testified	Blakeman and Johnston while inside
24	they "rushed" her in a hostile manner	the Rock Fort. Reed Dep. at 171:4-5
25	and asked whether she wanted a beer.	(Q "Where did this take place?" A
26	Defendant Blakeman got close to her	"These events took place in the fort.").
27	face and filmed her. Defendant	
28		

1	Defendants' Statement of Uncontroverted Facts and Evidence in Support	Plaintiffs' Response in Opposition
2		
3	Johnston "opened a can of beer in a way	
4	that sprayed on [her] arm and camera."	
5		
6	10/24/16 Reed Deposition, 170:5-	
7	173:17.	
8	43. Defendant Johnston also acted in a	43. Undisputed.
9	sexual manner toward her and another	
10	woman by "grunting and making –	
11	making moans and noises resembling []	
12	an orgasm. He was thrusting and	
13	rubbing his torso in a sexual manner."	
14	Reed asked why she was being filmed	
15	and the alleged response was because	
16	she was sexy. Defendant Johnston	
17	allegedly told her he's "big enough to	
18	get the job done" while grunting and	
19	moaning.	
20		
21	10/24/16 Reed Deposition, 177:14-	
22	178:2.	
23	44. Reed attempted to call the police, but	44. Undisputed.
24	was unable to receive cell reception.	
25		
26	10/24/16 Reed Deposition, 175:8-15;	
27	October 25, 2016 Deposition of Diana	
28		

1	Defendants' Statement of Uncontroverted Facts and Evidence in Support	Plaintiffs' Response in Opposition
2		
3	Milena Reed ("10/25/16 Reed	
4	Deposition") 203:7-12.	
5	45. Reed believes Defendant Johnston,	45. Undisputed.
6	while changing out of his wetsuit,	
7	intentionally permitted the towel	
8	wrapped around him to open such that	
9	he exposed his penis.	
10		
11	10/25/16 Reed Deposition, 358:18-	
12	360:23.	
13	46. Reed returned to the top of the bluff	46. Undisputed.
14	and approached a police officer to	
15	explain what had occurred.	
16		
17	10/24/16 Reed Deposition, 181:16-	
18	183:12; 10/25/16 Reed Deposition,	
19	216:20-25; 218:15-220:4.	
20	47. The police officer listened and then	47. Disputed in Part. Plaintiff Reed
21	escorted Reed back down the bluff to	testified only that the man who had
22	identify the men. They were gone.	acted in a sexually aggressive manner
23		toward her and sprayed beer on her was
24	10/24/16 Reed Deposition, 181:16-	no longer present. Reed Dep. at
25	183:12.	182:21-183:4. Plaintiff Reed did
26		testify that Charlie Ferrara, who had
27		been present during the incident, was
28		

1	Defendants' Statement of Uncontroverted Facts and Evidence in Support	Plaintiffs' Response in Opposition
2		
3		present in the Rock Fort when she
4		returned with the police officer. Reed
5		Dep. at 183:8-12.
6		
7	48. The police officer purportedly told	48. Disputed in Part. Plaintiff Reed
8	Reed that the Police Department kept	testified that the police officer said
9	LBB Defendants' photos and offered	there was a book of photographs with
10	her an opportunity to review them.	all the Lunada Bay Boy Defendants'
11		photographs, but did not offer her an
12	10/25/16 Reed Deposition, 221:7-	opportunity to review them. 10/25/16
13	225:24.	Reed Dep. at 223:10-18.
14		
15	49. Reed became upset when she had	49. Disputed. Plaintiff Reed did not
16	difficulty scheduling an appointment to	testify that she became upset. Plaintiff
17	review the photos, which she was	Reed stated that after attempting
18	allegedly made to believe existed.	approximately three times to contact a
19		detective to schedule an appointment,
20	10/25/16 Reed Deposition, 237:16-22;	she "eventually [] proceeded to retain
21	239:11-19.	[her] attorneys because [she] felt like
22		that was the only course of action [she]
23		could take because the police weren't
24		helping [her]." 10/25/16 Reed Dep. at
25		239:15-19.
26		
27	50. The City does not maintain a LBB	50. Disputed. Chief Kepley testified
28		

1	Defendants' Statement of	Plaintiffs' Response in Opposition
2	Uncontroverted Facts and Evidence	
3	in Support	
4	Defendants' photobook.	that he had no knowledge of such a
5	October 10, 2016 Deposition of Jeff	photobook. Kepley Dep. at 153:10-13.
6	Kepley ("Kepley Deposition"), 153:10-	Plaintiff Reed, however, testified that
7	13; 183:12-17.	she was told by a police officer that
8		such a photo book existed. 10/24/16
9		Reed Dep. at 221:24-222:9.
10	51.The "delay" in showing Reed photos	51. Disputed. Chief Kepley testified
11	was because a police officer had to	that "the reason [Plaintiff Reed] wasn't
12	create a "six pack" photo lineup from	able to view a lineup of pictures, one of
13	prior known arrest photos during a time	which was a suspect, for her to identify
14	the City was combatting a major	the suspect, [was] because the process
15	residential burglary crime wave.	just hadn't happened yet . . . the process
16		had to take its course of a normal
17	Kepley Deposition, 71:14-72:23;	criminal follow up investigation."
18	188:14-189:13; 200:19-24.	Kepley Dep. at 200:21-24, 201:9-10.
19		Chief Kepley did not testify that the
20		delay in creating a photo lineup was
21		related to a residential burglary crime
22		wave. <i>See id.</i>
23		
24	52.Reed ultimately identified Defendant	52. Disputed in Part. The evidence
25	Johnston from the police six-pack and	cited does not support the fact stated.
26	an arrest was made.	The testimony cited concerns an arrest
27		that was made and makes no mention
28		

1	Defendants' Statement of	Plaintiffs' Response in Opposition
2	Uncontroverted Facts and Evidence	
3	in Support	
4	Kepley Deposition, 55:9-22.	of Plaintiff Reed's identification of an
5		individual from a lineup. Indeed, Chief
6		Kepley testified that he "didn't recall
7		the arrestee or the defendant's name."
8		Kepley Dep. at 55:18-19. Plaintiff
9		Reed testified that she circled a photo
10		during the photo lineup of a person that
11		she now knows to be Jalian Johnston,
12		but she did not provide any names to
13		the police at the time of the lineup, nor
14		was she asked to do so. 10/25/16 Reed
15		Dep. at 230:10-14.
16	53.The Police Department sent a police	53. Disputed in Part. Chief Kepley did
17	report to the District Attorney, who	not testify that the Police Department
18	declined to press criminal charges.	sent the District Attorney a police
19		report. Instead, he testified that the
20	Kepley Deposition, 55:9-56:11; 201:11-	District Attorney declined to file
21	24.	charges because of the "totality of the
22		information" that was presented to the
23		district attorney. Kepley Dep. at 56:4-
24		11.
25		
26		
27	54.Reed returned to Lunada Bay at least	54. Undisputed.
28		

1	Defendants' Statement of	Plaintiffs' Response in Opposition
2	Uncontroverted Facts and Evidence	
3	in Support	
4	twice since February 13, 2016.	
5	10/25/16 Reed Deposition, 247:22-	
6	248:4.	
7	55. Reed claims to have been harassed	55. Disputed in Part. Plaintiff Reed
8	on each visit, but does not recall	recalled, in addition to the conduct
9	particulars beyond being called a	referenced by Defendants, the
10	"bitch", being photographed and	following additional particulars: she
11	recorded, and told she should not be	was told "you're coming here again, no
12	there and to leave. She did not recall	one wants you here, what are you
13	whether she reported any of these	doing here. And, you know, I tell them,
14	incidents.	well, it's beautiful, public beach, and
15		I'm allowed to be here. They would say
16	10/25/16 Reed Deposition, 248:5-8;	offensive things to me. They would,
17	251:2-252:7; 259:7-18.	you know, call me a bitch, and they
18		would say stuff to me after I had
19		passed – if I was with a friend, then
20		they would, you know, say insults
21		about me to my friend. They – yeah,
22		they kept basically telling me that I
23		shouldn't be there and that I'm not
24		welcome. And I also remember talking
25		to Charlie a few times and he
26		approached me. I feel like maybe he
27		felt bad that he didn't do anything

1	Defendants' Statement of	Plaintiffs' Response in Opposition
2	Uncontroverted Facts and Evidence	
3		regarding the beer incident to help, so
4		maybe it was his way of saying sorry to
5		kind of try to talk to me and explain
6		who the Bay Boys are and how they
7		work and – I don't know, so I've had
8		various discussions with him. I had
9		discussions with people in the fort and,
10		you know, I also unfortunately
11		experienced harassment in the way that
12		I was told I'm not welcomed there."
13		Reed Dep. at 251:2-252:7.
14		
15	56.Reed recalls that on at least one other	56. Disputed in Part. Plaintiffs do not
16	subsequent visit she encountered no	dispute that Plaintiff Reed did not
17	harassment.	experience harassment, intimidation, or
18		vandalism when she visited Lunada
19	10/25/16 Reed Deposition, 259:19-	Bay on one occasion after February 13,
20	260:11.	2016, however this fact is misleading
21		because no local surfers were present
22		when she visited Lunada Bay on this
23		occasion. Reed Dep. at 259:23-260.
24		
25		
26	57.A representative of CPR submitted a	57. Disputed. This is impermissible
27	declaration in support of Plaintiffs'	legal argument and is not a "fact."
28		

1	Defendants' Statement of Uncontroverted Facts and Evidence in Support	Plaintiffs' Response in Opposition
2		
3	motion for class certification; however,	Further, the CPR representative, Mark
4	that declaration did not allege any harm	Slatten, did describe harm suffered by
5	specific to the declarant or CPR.	CPR and/or its members. For instance,
6		he stated: "several of CPR's board
7	Declaration of Christopher D. Glos	members and/or volunteers . . . would
8	("Glos Decl."), ¶ 9; Glos Decl., Exhibit	have liked to have surfed, dived, taken
9	H.	photographs, hiked, or even just
10		enjoyed nature and the beach at Lunada
11		Bay but were afraid to because of the
12		reputation that it had for localism."
13		Slatten Dec., Dkt. No. 159-6 at ¶ 7. He
14		also stated that Dave Leuck (board
15		member) and Ian Stenehjerm both have
16		never been able to surf at Lunada Bay
17		because of localism. <i>Id.</i>
18		
19	58.City Municipal Code section	58.Undisputed.
20	9.16.030 prohibits blocking the access	
21	to any City beach. It provides:	
22	A. No person shall stand, sit,	
23	lie, or congregate on any path,	
24	trail, or other way providing	
25	access to or from any beach in	
26	such a manner as to interfere	
27	with or impede the free flow of	
28		

1	Defendants' Statement of Uncontroverted Facts and Evidence in Support	Plaintiffs' Response in Opposition
2		
3	travel along such accessway.	
4	B. Unless the prior consent of	
5	the city is first received, no	
6	person shall place, throw, leave,	
7	keep or maintain any object of	
8	any type upon any path, trail, or	
9	other way which provides access	
10	to or from any beach.	
11		
12	Declaration of Vickie Kroneberger	
13	("Kroneberger Decl."), ¶¶ 1-4;	
14	Kroneberger Decl., Exhibit A.	
15		
16	59.City Municipal Code section	59. Undisputed.
17	9.16.010 also requires surfers (and	
18	others) to engage in surfing with due	
19	regard to others, including but not	
20	limited to "accommodating other	
21	persons utilizing the beach and/or water	
22	to the extent feasible."	
23		
24	Kroneberger Decl., ¶¶ 1-4; Kroneberger	
25	Decl., Exhibit A.	
26	60.City police officers are directed to	60. Disputed. Chief Kepley testified
27	enforce the municipal code.	that he "normally expect[ed]" officers
28		enforce the municipal code, but never

1	Defendants' Statement of	Plaintiffs' Response in Opposition
2	Uncontroverted Facts and Evidence	
3	in Support	
4	Kepley Deposition, 143:13-18.	testified that officers are directed to do
5		so. Kepley Dep. 143:13-18.
6		
7	61.The City has an anti-harassment	61. Undisputed.
8	policy.	
9		
10	November 18, 2016 Deposition of	
11	Anton Dahlerbruch ("Dahlerbruch	
12	Deposition"), 45:11-16.	
13	62.The City takes allegations of	62. Disputed. Mr. Dahlerbruch stated
14	intimidation very seriously and responds	that he "would defer to the Police
15	to it.	Department for what violation of law
16		took place and they would handle it."
17	Dahlerbruch Deposition, 155:25-156:3.	11/18/16 Dahlerbruch Dep. at 155:21-
18		22. Further, Plaintiff Reed testified
19		that she did complain of intimidation
20		and harassment to the Police
21		Department, but the police were not
22		responsive to her complaint and were
23		not helping her. 10/25/16 Reed Dep. at
24		239:15-240:4. Plaintiff Spencer
25		similarly testified that he told a police
26		officer that he had been attacked in the
27		water by a surfer and showed the
28		

1	Defendants' Statement of	Plaintiffs' Response in Opposition
2	Uncontroverted Facts and Evidence	
3	in Support	
4		officer his injury, but the officer did
5		not pursue it further. Spencer Dep. at
6		126:6-23.
7	63.Chief Kepley joined the Police	63. Undisputed.
8	Department in June 2014.	
9		
10	Kepley Deposition, 33:18-20.	
11	64.Prior to employment Chief Kepley	64. Disputed. Chief Kepley testified
12	did not know anyone at the City or in	that he knew Palos Verdes Estates
13	the Police Department other than a	Police Department's prior interim
14	former lieutenant, who had been	police chief, Dave Winneg, though
15	deceased for a number of years, and he	they never worked together. Kepley
16	had never lived in the City.	Dep. at 112:6-10.
17		
18	Kepley Deposition, 19:8-20:1.	
19	65.In or around May 2015, Chief	65. Disputed. Chief Kepley testified
20	Kepley became aware of a website	that he did not know whether any effort
21	published video that showed several	was made by his department to identify
22	reporters being harassed at Lunada Bay.	the people who harassed the reporters.
23	He initiated a criminal investigation and	Kepley Dep. at 29:19-21. Further,
24	assigned extra police patrols to patrol	Chief Kepley testified that he looked
25	Lunada Bay.	into whether or not the reporters had
26		committed a crime by recording a
27	Kepley Deposition, 29:22-32:14.	police dispatcher on video. Kepley
28		

1	Defendants' Statement of Uncontroverted Facts and Evidence in Support	Plaintiffs' Response in Opposition
2		
3		Dep. at 30:9-18. Plaintiffs do not
4		dispute that Chief Kepley testified that
5		he assigned extra police patrols to
6		Lunada Bay.
7		
8		
9	66.Extra police patrols continued from	66. Disputed in Part. Chief Kepley
10	approximately May 2015 and remained	testified that extra patrols began after
11	in place at the time of Plaintiffs Spencer	May 20, 2015 and were in place as of
12	and Reed alleged personal incidents at	October 10, 2016. Kepley Dep. at
13	Lunada Bay.	32:9-14. But Chief Kepley did not
14		testify whether extra patrols were in
15	Kepley Deposition, 32:4-14.	effect on the specific dates of the
16		incidents involving Plaintiffs at Lunada
17		Bay.
18		
19	67.There have been more than 400 or	67. Undisputed.
20	500 police patrols of Lunada Bay,	
21	whereby a police officer parks at the top	
22	of the bluff, exits a police vehicle and	
23	observes the surf below for any criminal	
24	activity, as well as to show a police	
25	presence and provide a deterrent.	
26		
27	Kepley Deposition, 97:14-24; 98:20-	
28		

1	Defendants' Statement of	Plaintiffs' Response in Opposition
2	Uncontroverted Facts and Evidence	
3	in Support	
4	99:7; 109:21-110:12; 111:10-12.	
5	68. In addition, police officers descended	68. Disputed. Chief Kepley testified
6	the bluff and patrolled the beach.	that "[i]t's more typical for them to
7	Kepley Deposition, 99:8-16.	stand at the top. They have gone down
8		to the beach. I don't know how many
9		times." Kepley Dep. at 99:14-16.
10		Additionally, Cory Spencer testified
11		that "while extra patrols at Lunada Bay
12		are appreciated, officers standing along
13		the bluffs cannot observe anything that
14		goes on in the water, along the shore,
15		or in the Rock Fort down below."
16		Spencer Decl. Supp. Class Cert., Dkt.
17		No. 159-4 at ¶ 25. Defendant N.F.
18		testified that in the approximately 12
19		years he has surfed at Lunada Bay, he
20		has seen police officers on the beach
21		"about three" times. 7/6/17 Deposition
22		of N.F. ("N.F. Dep.") at 30:24-31:12.
23		Defendant Charlie Ferrara testified that
24		"through all [his] years" surfing at
25		Lunada Bay (since October 16, 1994),
26		he has seen police officers at the beach
27		approximately six or seven times.
28		7/7/17 Deposition of Charlie Ferrara

1	Defendants' Statement of	Plaintiffs' Response in Opposition
2	Uncontroverted Facts and Evidence	
3		("Charlie Ferrara Dep.") at 63:12-64:5,
4		23:22-24.
5		
6		
7	69.Chief Kepley educated himself on	69. Undisputed.
8	the rumors and claims that localism at	
9	Lunada Bay had existed for as many as	
10	50 years.	
11		
12	Kepley Deposition, 51:6-52:5.	
13	70.The City spent a significant amount	70. Disputed. Mr. Dahlerbruch does
14	of time before, during and after the	not testify when, in relation to the
15	video posting to understand localism,	Guardian's video posting, the City
16	including collecting information from	spent a "significant amount of time"
17	various sources and holding meetings.	"trying to understand" localism.
18		Rather, he testifies the City's efforts in
19	Dahlerbruch Deposition, 69:22-70:7.	this regard occurred "before, during,
20		and after" the time the City's website
21		was updated. Dahlerbruch Dep. at
22		69:25-70:6 ("that may have been
23		before, during or after the website was
24		updated.").
25		
26	71.Chief Kepley learned that although	71. Disputed. The evidence cited does
27	the Police Department had worked for	not establish that the Police
28		

1	Defendants' Statement of	Plaintiffs' Response in Opposition
2	Uncontroverted Facts and Evidence	
3		
4	years to address and combat localism,	Department has worked for years to
5	the public perception was that it was	address localism; rather, the evidence
6	tolerated.	merely establishes that to be Chief
7	Kepley Deposition, 52:6-53:21.	Kepley's perception or opinion based
8		on hearsay. Kepley Dep. at 53:11-
9		54:6. Further, Chief Kepley testified
10		that the fact that a video showed bullies
11		confronting a perceived outsider at
12		Lunada Bay demonstrates that "more
13		work probably needs to be done."
14		Kepley Dep. at 69:9-17. Chief Kepley
15		also wrote in an online post to the Pals
16		Verdes Estates Community that he
17		"acknowledge[s] we have work to do
18		here with these bullies, and this has
19		been going on intermittently for
20		probably fifty years." Kepley Dep.,
21		Ex. 4 at Bates No. CITY 1083. He also
22		stated that "[w]hile this police
23		department has been criticized for not
24		taking [surfing localism] seriously, we
25		have over the years done much to
26		address the problem before I took over
27		as Chief. Likely not enough though."
28		<i>Id.</i>

1	Defendants' Statement of Uncontroverted Facts and Evidence in Support	Plaintiffs' Response in Opposition
2		
3		
4	72. On May 15, 2015, Chief Kepley sent	72. Undisputed.
5	a memorandum to the City Mayor and	
6	Council regarding localism in Lunada	
7	Bay.	
8		
9	Kepley Deposition, 210:2-17.	
10	73. Chief Kepley identified measures	73. Disputed in Part. Chief Kepley
11	taken by the PVE Police Department in	testified, with respect to the measures
12	the preceding past several years,	identified, that none of the measures
13	including: (1) extra patrols with	were currently employed by his police
14	uniformed officers on high surf days;	department to address localism.
15	(2) utilizing ATVs to patrol the cliff's	Kepley Dep. at 211:6-14.
16	edge; (3) having officers dress in plain	Additionally, the City's boat was
17	clothes and drive unmarked vehicles to	declared "unseaworthy due to age and
18	observe and interact with people along	condition" shortly after June of 2014.
19	the cliffs and bluffs; (4) undercover	<i>Id.</i> at 38:1-4.
20	operations; and (5) boat patrols in	
21	Lunada Bay.	
22		
23	Kepley Deposition, 210:2-212:3;	
24	Kepley Deposition, Exhibit 25.	
25	74. Chief Kepley spoke about creating a	74. Disputed in Part. Chief Kepley
26	police presence on the water by	testified that, while he believes a boat
27	replacing the City's old ocean patrol	would be helpful to the City's policing
28		

1	Defendants' Statement of	Plaintiffs' Response in Opposition
2	Uncontroverted Facts and Evidence	
3	in Support	
4	boat and establishing Parkland Rangers	efforts, "the cost of the boat is cost
5	as another resource to patrol and	prohibitive at this point in time."
6	maintain a visible presence.	Kepley Dep. at 39:18-21.
7	Kepley Deposition, 210:2-212:3 & Exh.	
8	25.	
9	75. Although Chief Kepley had not been	75. Disputed. Chief Kepley's initial
10	employed at the City until June 2014, he	response to the Guardian video was to
11	was in 2015 and intended to change the	address perception by stating publicly
12	perception, address localism, protect the	that he hoped to make an arrest and an
13	public and ensure access to Lunada Bay	example of anyone who behaved
14	remained open and free of harassment.	criminally at Lunada Bay. Kepley
15		Dep. at 54:8-59:1. But significant
16	Kepley Deposition, 51:6-53:21.	community backlash followed Chief
17		Kepley's comments, and so in
18		response, Chief Kepley sought to
19		address the perception that the police
20		department was "a little bit off balance,
21		maybe the perception was we are
22		heavy handed or too eager to make an
23		arrest for self[-]promotion reasons."
24		<i>Id.</i> at 88:14-89:3. So Chief Kepley
25		stated in a periodical interview that
26		"threatening arrests in Lunada Bay
27		would be inflammatory to the surfers

1	Defendants' Statement of	Plaintiffs' Response in Opposition
2	Uncontroverted Facts and Evidence	
3		and would cause a rift. And you can't
4		have that right now." <i>Id.</i> at 90:14-25.
5		Chief Kepley wanted to focus on
6		building relationships with the surfers
7		instead. <i>Id.</i> at 93:2-9, 86:4-11. Chief
8		Kepley was motivated in part to
9		address the community backlash and
10		tone down his initial rhetoric after a
11		conversation with the City Manager.
12		<i>Id.</i> at 91:19-92:2. The Palos Verdes
13		Police Department never announced
14		any arrests or publicized any police
15		action with respect to Lunada Bay
16		localism. Kepley Dep. at 61:13-15.
17		
18	76. Prior to Plaintiffs' incidents, Chief	76. Disputed in Part. Chief Kepley
19	Kepley directed the police captains to	further stated that, "at the same time,
20	actively engage the surfers to express	we do not want to alienate many of our
21	the City's position that Lunada Bay was	long-term residents," meaning he did
22	a public beach, everyone was expected	not want "anyone, particularly our
23	to be civil, and the City would not	residents" to view the police as being
24	tolerate the type of harassment seen in	"so overbearing and so aggressive."
25	the published video.	Kepley Dep. at 34:15-20 & Exh. 2.
26		
27	Kepley Deposition, 33:25-34:13.	
28		

1	Defendants' Statement of	Plaintiffs' Response in Opposition
2	Uncontroverted Facts and Evidence	
3	in Support	
4	77. Prior to Plaintiffs' incidents, the	77. Disputed. Chief Kepley was
5	Police Department began to make a	unsure whether anyone from the Palos
6	number of regular contacts with surfers	Verdes Estates Police Department
7	at Lunada Bay.	made contact with local surfers.
8	Kepley Deposition, 35:10-37:13.	Kepley Dep. at 35:10-13 (Q "So did
9		anyone from the Palos Verdes Estates
10		Police Department make contact with
11		local surfers? A "I believe they did.").
12	78. Prior to Plaintiffs' incidents, Chief	78. Undisputed.
13	Kepley made a public announcement	
14	that he hoped to make an arrest of one	
15	of the harassing individuals in the video.	
16		
17	Kepley Deposition, 54:8-55:2.	
18	79. Chief Kepley wanted the publicity	79. Disputed. Initially, Chief Kepley
19	from an arrest to change perceptions and	wanted to address perception by stating
20	show the public that improper behavior	publicly that he hoped to make an
21	at Lunada Bay would not be tolerated.	arrest and an example of anyone who
22		behaved criminally at Lunada Bay.
23	Kepley Deposition, 58:22-60:1.	Kepley Dep. at 54:8-59:1. But
24		significant community backlash
25		followed Chief Kepley's comments,
26		and Chief Kepley was concerned that
27		the police department appeared "a little
28		

1	Defendants' Statement of	Plaintiffs' Response in Opposition
2	Uncontroverted Facts and Evidence	
3		bit off balance . . . [that] we are heavy
4		handed or too eager to make an arrest
5		for self[-]promotion reasons." <i>Id.</i> at
6		88:14-89:3. As a result, Chief Kepley
7		stated in a periodical interview that
8		"threatening arrests in Lunada Bay
9		would be inflammatory to the surfers
10		and would cause a rift. And you can't
11		have that right now." <i>Id.</i> at 90:14-25.
12		Chief Kepley wanted to focus on
13		building relationships with the surfers
14		instead. <i>Id.</i> at 93:2-9, 86:4-11. The
15		Palos Verdes Police Department never
16		announced any arrests or publicized
17		any police action with respect to
18		Lunada Bay localism. Kepley Dep. at
19		61:13-15.
20		
21	80. From May 2015 until at least the date	80. Disputed. Chief Kepley testified
22	of Chief Kepley's October 10, 2016	that he believes he has communicated
23	Deposition, he believes he has	in "101 conversations" with staff and
24	communicated in "101 conversations"	department individuals that localism is
25	with Police Department personnel that	not <i>condoned</i> by his department. Chief
26	the City did not tolerate localism.	Kepley made no mention of localism
27		not being "tolerated" by the City.
28		

1	Defendants' Statement of Uncontroverted Facts and Evidence in Support	Plaintiffs' Response in Opposition
2		
3	Kepley Deposition, 48:16-49:8.	Kepley Dep. at 48:16-49:5.
4		
5	81.Chief Kepley reached out to other	81. Disputed in Part. Although Chief
6	law enforcement agencies in other beach	Kepley reached out to other law
7	cities to discuss best practices and to	enforcement agencies to collaborate on
8	collaborate on surf localism challenges.	localism challenges, the other chiefs of
9		police did not "have any information
10	Kepley Deposition, 203:3-12.	for me to consider best practices"
11		because they "did not believe they had
12		a localism problem in their
13		jurisdictions." Kepley Dep. at 203:3-
14		20.
15		
16	82.Chief Kepley put together an	82. Undisputed.
17	undercover operation with assistance	
18	from a different law enforcement	
19	agency, but it was compromised when	
20	surfers found out about it.	
21		
22	Kepley Deposition, 40:3-43:7.	
23	83.The City Manager reached out to	83. Disputed. Mr. Dahlerbruch did not
24	other city managers on how they deal	testify that he reached out to more than
25	with issues of public access to beaches.	one City Manager. He testified that he
26		talked to a single City Manager, for the
27	Dahlerbruch Deposition, 260:7-11.	City of Malibu, about Lunada Bay's
28		patio structure but Malibu did not have

1	Defendants' Statement of	Plaintiffs' Response in Opposition
2	Uncontroverted Facts and Evidence	
3		a similar public access issue. 11/18/17
4		Dahlerbruch Dep. at 260:9-13.
5		Further, Mr. Dahlerbruch testified that
6		the City has not "investigated with
7		other cities what signage they have" in
8		terms of warnings to surfers to respect
9		people or share waves, for instance.
10		11/18/17 Dahlerbruch Dep. at 259:1-
11		14.
12		
13	84. The City conducted a "listening tour"	84. Disputed. Mr. Dahlerbruch did
14	to understand the localism issues and to	meet with Surf Rider Foundation, but it
15	address them. One of the meetings	was to understand localism, not to
16	requested by the City was with the Surf	address it. 11/18/16 Dahlerbruch Dep.
17	Rider Foundation to understand their	at 70:8-10. Additionally, Mr.
18	perspective on the localism issues and to	Dahlerbruch testified that he did not
19	determine how to work to address the	learn much from this meeting. <i>Id.</i> at
20	issue.	72:24-73:9. He also stated that he
21		asked if Surf Rider Foundation would
22	Dahlerbruch Deposition, 70:8-73:7;	send members to surf at Lunada Bay to
23	85:9-15; 91:19-22.	"experience it for themselves, to draw
24		their own conclusion," but they refused
25		because they did not want to put their
26		members in harm's way. <i>Id.</i> at 73:12-
27		24.
28		

1	Defendants' Statement of Uncontroverted Facts and Evidence in Support	Plaintiffs' Response in Opposition
2		
3	85.The City requested and met with the	85. Undisputed.
4	Coastal Commission regarding the	
5	structures at the foot of the Lunada Bay	
6	bluff.	
7		
8	Dahlerbruch Deposition, 74:16-19;	
9	94:19-95:5; 96:10-13.	
10	86.The Coastal Commission informed	86. Disputed in Part. The Coastal
11	the City that it could permit or remove	Commission informed the City that
12	the structures.	they <i>had to</i> either obtain permits to
13		maintain the structure or remove it.
14	Dahlerbruch Deposition, 97:2-7; 106:7-	Plaintiffs dispute this fact to the extent
15	10.	Defendants imply that doing nothing
16		with respect to the structure was an
17		option. 11/18/16 Dahlerbruch Dep. at
18		97:2-7.
19		
20		
21	87.The City followed up with both the	87. Disputed in Part. Mr. Dahlerbruch
22	Surf Rider Foundation and the Coastal	testified that the City followed up with
23	Commission.	the Surf Rider Foundation, but only
24		stated that he believed his staff had
25	Dahlerbruch Deposition, 85:9-15;	telephone calls with the Coastal
26	96:10-13.	Commission after the initial meeting.
27		11/18/16 Dahlerbruch Dep. at 85:9-11;
28		

1	Defendants' Statement of	Plaintiffs' Response in Opposition
2	Uncontroverted Facts and Evidence	
3		96:10-13. Thus Plaintiffs dispute this
4		statement to the extent it implies that
5		the City reached out to the Coastal
6		Commission on its own initiative
7		following its meeting.
8		
9	88.The City Manager visited Lunada	88. Disputed in Part. Mr. Dahlerbruch
10	Bay on a number of occasions and met	testified only that he has walked down
11	with surfers there to understand the	to Lunada Bay but did not specify how
12	issues.	many times he visited or when these
13		visits occurred. 11/18/16 Dahlerbruch
14	Dahlerbruch Deposition, 72:4-23.	Dep. at 72:4-19.
15		
16		
17	89.The City met with the Lunada Bay	89. Undisputed.
18	Homeowner's Association.	
19		
20	Dahlerbruch Deposition, 70:8-17;	
21	124:14-22.	
22	90.The City initiated contact with Heal	90. Undisputed.
23	the Bay as part of its "listening tour" to	
24	understand perspectives, perceptions,	
25	and history on the issues.	
26		
27	Dahlerbruch Deposition, 112:24-114:11.	
28		

1	Defendants' Statement of	Plaintiffs' Response in Opposition
2	Uncontroverted Facts and Evidence	
3		
4	91.Chief Kepley attended many, if not	91. Disputed in Part. Mr. Dahlerbruch
5	all these meetings.	testified that the Police Chief attended
6		only the meetings with the Coastal
7	Dahlerbruch Deposition, 93:18-94:13;	Commission and a meeting with Heal
8	97:23-98:8; 113:22-25.	the Bay. Dahlerbruch Dep. 61:25-70:7;
9		260:22-261:10.
10		
11	92.Prior to Plaintiffs' incidents, the City	92. Disputed. Mr. Dahlerbruch
12	had started an educational campaign	testified only that the website was
13	about localism.	updated to add a statement related to
14		localism. 11/18/16 Dahlerbruch Dep.
15	Dahlerbruch Deposition, 61:25-70:7;	at 63:23. The evidence cited by
16	260:22-261:10.	Defendants does not establish when the
17		statement on localism was placed on
18		the City's website, nor does it discuss
19		an "educational campaign," either
20		directly or indirectly.
21		
22	93.Hundreds of cardboard fliers	93. Disputed in Part. Plaintiffs dispute
23	encouraging surfers or others to feel	this statement only to the extent it
24	comfortable and to report crimes or	implies that these cardboard fliers were
25	incidents that may have occurred in	distributed outside of the Palos Verdes
26	surfing areas were distributed by police	Estates community. <i>See</i> Kepley Dep.
27	officers at Lunada Bay and around the	at 100:19-20 ("There was no effort to
28		

1	Defendants' Statement of	Plaintiffs' Response in Opposition
2	Uncontroverted Facts and Evidence	
3	in Support	
4	City.	distribute them outside of the
5	Dahlerbruch Deposition, 99:10-17;	community.").
6	Kepley Deposition, 97:24-98:2; 99:17-	
7	100:15.	
8	94.The City parked a patrol car in	94. Disputed in Part. Chief Kepley
9	Lunada Bay with a LED display	testified that "[w]e have received
10	message in the rear window requesting	feedback that [the LED sign is] a little
11	anyone with information, or anyone	difficult to read. So we don't rely on it
12	victimized, or otherwise encountering	as much as we once did." Kepley Dep.
13	an incident, to report it.	at 102:2-4.
14		
15	Kepley Deposition, 98:3-13.	
16	95.The City posted content on its	95. Undisputed.
17	website stating the City does not tolerate	
18	localism.	
19		
20	Dahlerbruch Deposition, 61:25-70:7.	
21	96.The City website includes a directory	96. Undisputed.
22	and permits individuals to send e-mails	
23	to anyone at the City that that individual	
24	believes should receive their message or	
25	complaint.	
26		
27	Dahlerbruch Deposition, 260:22-261:10.	
28		

1	Defendants' Statement of Uncontroverted Facts and Evidence in Support	Plaintiffs' Response in Opposition
2		
3	97.If individuals call the City with	97. Undisputed.
4	complaints, the City receptionist will	
5	help in determining where to direct a	
6	complaint.	
7		
8	Dahlerbruch Deposition, 260:22-261:10.	
9	98.On or about December 31, 2015,	98. Undisputed.
10	Chief Kepley posted a message on the	
11	social media website Next Door about	
12	the City's efforts to address localism.	
13		
14	Kepley Deposition, 62:2-21; Kepley	
15	Deposition, Exhibit 4.	
16	99.On or about February 8, 2016, the	99. Disputed in Part. City Manager
17	City developed and later posted a	Anton Dahlerbruch testified that it is
18	statement on its website about localism,	possible that a public relations firm
19	the Police Department's investigation	retained by the City, the Wolcott
20	and evaluation of the situation and the	Company, developed the statement
21	potential for increased police patrols at	about localism that was later posted to
22	the beach areas.	the City's website. Dahlerbruch Dep.
23		at 69:6-12.
24	Kepley Deposition, 95:23-97:13;	
25	112:14-113:13; Kepley Deposition,	
26	Exhibits 11 and 13.	
27	100. Plaintiff Spencer and Reed's	100. Disputed. Chief Kepley testified
28		

1	Defendants' Statement of Uncontroverted Facts and Evidence in Support	Plaintiffs' Response in Opposition
2		
3	alleged incidents discussed under the	that the alleged "crime spree" took
4	factual background above took place	place from mid-October 2015 to
5	during a time the City was experiencing	December 2015. Kepley Dep. at 71:
6	a substantial increase in residential	17-14. Both Plaintiff Spencer and
7	burglaries by organized gangs or gang-	Plaintiff Reed testified they were
8	affiliated criminal group from south Los	harassed and assaulted outside of this
9	Angeles.	brief three-month timeframe. Spencer
10		Dep. at 137:16-138:5, 142:24-144:19,
11	Kepley Deposition, 71:14-72:23;	170:9-24, 173:5-174:14; Reed Dep. at
12	188:14-189:13.	101:22-103:18, 119:25-121:1, 129:18-
13		23, 130:8-14, 130:17-25, 134:5-24.
14		
15	101. It is typical for the City to have	101. Undisputed.
16	zero to three burglaries per month, but	
17	in December 2015 the City experienced	
18	20 to 25 burglaries.	
19		
20	Kepley Deposition, 71:14-72:23.	
21	102. A number of residents	102. Disputed in Part. Residents
22	complained about the amount of law	complained about Chief Kepley's
23	enforcement resources allocated toward	<i>statements</i> with respect to localism.
24	patrolling Lunada Bay, as well as the	Kepley Dep. at 83:5-8 ("some residents
25	tough stance Chief Kepley took against	. . . expressed disagreement with the
26	local surfers harassing or intimidating	way in which I was publicly addressing
27	other surfers.	the issue at hand.") There is no
28		

1	Defendants' Statement of	Plaintiffs' Response in Opposition
2	Uncontroverted Facts and Evidence	
3	in Support	
4	Kepley Deposition, 76:17-84:16.	evidence that residents complained
5		because Chief Kepley or the police
6		department actually was tough on local
7		surfers who harassed and intimidated
8		others. Indeed, Chief Kepley stated
9		that the police department never did
10		publicize an arrest of a local surfer.
11		Kepley Dep. at 61:13-15.
12	103. Chief Kepley opined that given so	103. Undisputed
13	few incidents at Lunada Bay and the	
14	burglary spree in the City that the Police	
15	Department efforts were appropriate and	
16	reasonable in scope and size.	
17		
18	Kepley Deposition, 114:21-115:9;	
19	187:13-189:13.	
20	104. The Police Department has 25	104. Undisputed.
21	full-time sworn police officers.	
22		
23	Kepley Deposition, 121:5-7.	
24	105. In October 2016 the City had six	105. Undisputed.
25	reserve police officers.	
26		
27	Kepley Deposition, 121:8-13.	
28		

1	Defendants' Statement of	Plaintiffs' Response in Opposition
2	Uncontroverted Facts and Evidence	
3	106. There are 12 non-sworn officers	106. Undisputed.
4	(or police service officers).	
5		
6	Kepley Deposition, 121:14-22.	

9 DATED: July 31, 2017

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REED, and COASTAL PROTECTION

RANGERS, INC.